IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10346 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHA SINHA W/O. HARI NARAYAN SINHA - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 2 - Respondent(s)

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Appearance :

MR NV GANDHI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MS LILU K BHAYA for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and / or order

directing the respondent to supply electricity power to the petitioners Shed No.C1B-6224.

2. It is the contention on behalf of the petitioner that the petitioner has purchased the shed in question in a public auction held by the GIDC and after purchase the petitioner wanted to have electricity supply and therefore the petitioner applied for the same. However, the petitioner was informed that unless the petitioner clears and / or pays the dues of the erstwhile owner, the petitioner will not be given electricity supply. Relying upon the judgment of the Hon'ble Supreme Court in the case of ISHA MARBLES LTD. V. BIHAR STATE ELECTRICITY BOARD reported in (1995) 2 SCC 648, Shri Gandhi, learned advocate appearing on behalf of the petitioner has submitted that insistence on the part of the respondents to pay dues of the erstwhile owner from the petitioner as pre-condition for supply of the electricity supply to the petitioner is absolutely illegal and unwarranted and therefore, it is requested to allow the present Special Civil Application.

3. Ms.Lilu Bhaya, learned advocate appearing on behalf of the respondent has submitted that in the facts and circumstances of the case, the judgment of the Hon'ble Supreme Court in the case of ISHA MARBLES (Supra), is not applicable as in that case, at the relevant point of time, there was no statutory condition like Condition-2(J) which enables the respondent to recover the dues of the erstwhile owner from the subsequent purchaser. She has, however, relied upon the judgment of the Division Bench of this Court dated 18.7.2005 rendered in Letters Patent Appeal No. 691 of 2003 and has submitted that at the relevant time when the petitioner purchased the property in question, there was incorporation of Condition-2(J), more particularly, in the year 2003 and therefore, it is requested to dismiss the present Special Civil Application.

4. Considering the fact that when the petitioner purchased the said property in question, the Condition No.2(J) was one of the conditions of supply was already there which entitles the respondent to

recover the dues of the erstwhile owner from the subsequent purchaser and considering the judgment of the Division Bench of this Court rendered in Letters Patent Appeal No.691 of 20003, it cannot be said that the action of the respondent in insisting for the payment of dues of the erstwhile owner from the petitioner was in any way illegal and the same is arbitrary and contrary to the provisions of statue. Under the circumstances, there is no substance in the present Special Civil Application.

5. For the reasons stated above, the petition fails. Rule is discharged, however, there shall be no order as to costs.

[M.R.Shah, J.]

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